

## § 2.330

may not file replies to the objections unless the presiding officer so directs. The filing of objections does not stay the decision unless the presiding officer so orders. The presiding officer may revise the order in the light of the objections presented and, as permitted by § 2.319(l), may certify for determination to the Commission any matter raised in the objections the presiding officer finds appropriate. The order controls the subsequent course of the proceeding unless modified for good cause.

### § 2.330 Stipulations.

Apart from any stipulations made during or as a result of a prehearing conference, the parties may stipulate in writing at any stage of the proceeding or orally during the hearing, any relevant fact or the contents or authenticity of any document. These stipulations may be received in evidence. The parties may also stipulate as to the procedure to be followed in the proceeding. These stipulations may, on motion of all parties, be recognized by the presiding officer to govern the conduct of the proceeding.

### § 2.331 Oral argument before the presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, the presiding officer may allow, and fix a time for, the presentation of oral argument. The presiding officer will impose appropriate limits of time on the argument. The transcript of the argument is part of the record.

### § 2.332 General case scheduling and management.

(a) *Scheduling order.* The presiding officer shall, as soon as practicable after consulting with the parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that establishes limits for the time to file motions, conclude discovery, commence the oral phase of the hearing (if applicable), and take other actions in the proceeding. The scheduling order may also include:

(1) Modifications of the times for disclosures under §§ 2.336 and 2.704 and of

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the extent of discovery to be permitted;

(2) The date or dates for prehearing conferences; and

(3) Any other matters appropriate in the circumstances of the proceeding.

(b) *Model milestones.* In developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in Appendix B to this part as a starting point. The presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its safety and environmental evaluations (paragraph (e) of this section), and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

(c) *Objectives of scheduling order.* The scheduling order must have as its objectives proper case management purposes such as:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation; and

(5) Facilitating the settlement of the proceeding or any portions thereof, including the use of Alternative Dispute Resolution, when and if the presiding officer, upon consultation with the parties, determines that these types of efforts should be pursued.

(d) *Effect of NRC staff's schedule on scheduling order.* In establishing a schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. Hearings on safety

issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS. In addition, discovery against the NRC staff on safety or environmental issues, respectively, should be suspended until the staff has issued the SER or EIS, unless the presiding officer finds that the commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

[69 FR 2236, Jan. 14, 2004, as amended at 70 FR 20461, Apr. 20, 2005]

**§ 2.333 Authority of the presiding officer to regulate procedure in a hearing.**

To prevent unnecessary delays or an unnecessarily large record, the presiding officer:

- (a) May limit the number of witnesses whose testimony may be cumulative;
- (b) May strike argumentative, repetitious, cumulative, unreliable, immaterial, or irrelevant evidence;
- (c) Shall require each party or participant who requests permission to conduct cross-examination to file a cross-examination plan for each witness or panel of witnesses the party or participant proposes to cross-examine;
- (d) Must ensure that each party or participant permitted to conduct cross-examination conducts its cross-examination in conformance with the party's or participant's cross-examination plan filed with the presiding officer;
- (e) May take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and
- (f) May impose such time limitations on arguments as the presiding officer determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

**§ 2.334 Implementing hearing schedule for proceeding.**

(a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, take appropriate action to maintain the hearing schedule established by the presiding officer in accordance with 10 CFR 2.332(a) of this part for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) *Modification of hearing schedule.* A hearing schedule may not be modified except upon a finding of good cause by the presiding officer or the Commission. In making such a good cause determination, the presiding officer or the Commission should take into account the following factors, among other things:

- (1) Whether the requesting party has exercised due diligence to adhere to the schedule;
- (2) Whether the requested change is the result of unavoidable circumstances; and
- (3) Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

(c) The presiding officer shall provide written notification to the Commission any time during the course of the proceeding when it appears that there will be a delay of more than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a), or that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the hearing schedule established under 10 CFR 2.332(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer or the Board proposes to take to avoid or mitigate the delay.

[70 FR 20461, Apr. 20, 2005]